XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(18)

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

APPELLANT (In Jail) — Pardeshi, S/o Galao Basade, aged about 34 years, R/o Kosmanda, P.S. Champa, District Janjgir-Champa (CG).

-Versus-

RESPONDENT — State of C.G.

(Appeal under Section 374(2) of the Cr.P.C.)

Division Bench :

Hon'ble Shri L.C. Bhadoo &
Hon'ble Shri Sunil Kumar Sinha, JJ

27-7-2007

Shri H.S. Ahulwalia, counsel for the appellant.

Shri D.K. Gwalre, Addl. Public Prosecutor for the State.

Heard.

Oral judgment dictated on *dias*.

Sunil Kumar Sinha, J

This appeal is directed against the judgment of conviction and order of sentence dated 26-7-2002 passed by the Additional Sessions Judge, Janjgir, in Sessions Trial No.273/2000 whereby the appellant was convicted under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life and to pay a fine of Rs.100/-.

2) The case of the prosecution, in brief, is that on 13-5-2000 the appellant caused death of deceased Duwasia Bai. The incident was witnessed by Kiri Bai (PW-11) and Rathram (PW-12). Kiri Bai is the neighbour of the deceased

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

and Rathram is the son of the deceased. First Information Report (Ex.P/1) was lodged by Budhram (PW-1) in Police Station Champa, which contains the name of the appellant. During the course of investigation, notice to witnesses under Section 175 of the Code of Criminal Procedure was given under Ex.P/2 and the inquest on the body of deceased was prepared under Ex.P/3 on 13-5-2000. Blood stained & plain soil along with the chain & pieces of bangles of the deceased were seized from the place of occurrence on 13-5-2000 under Ex.P/4. Memorandum of the appellant was recorded under Ex.P/5. On the basis of information given by the appellant axe, the weapon of offence, was recovered under Ex.P/6. A club (*danda*) was recovered under Ex.P/7 on 15-5-2000. The dead body of the deceased was sent for postmortem to BDM Hospital, Champa under Ex.P/5 where Dr. H.S. Chandel (PW-15) conducted the postmortem, prepared postmortem report dated 13-5-2000 (again marked as Ex.P/6). According to the postmortem report, the deceased received as many as 9 external injuries. Cause of death was opined to be shock and hemorrhage as a result of fracture of C-1 & C-2 with injury of spinal card. The evidence of PW-15 Dr. H.S. Chandel would show that there were fractures on both the bones of forearm. There were fractures of right ribs. There was dislocation of C-1 & C-2 with transaction of spinal card with 6 x 2½ cm. incised wound over left side of the neck. There was incised wound in the size of 6 x 4 cm. over left side of neck bone deep. There was incised wound in the size of 7½ x 3 cm. and there was another incised wound in the size of 5 x 2½ cm. over posterior aspect of neck at a distance of 1 cm. from each other. Neck mussels were lacerated. There was incised wound in the size of 4 x 2½ cm. over left shoulder. There was incised wound in the size of 3 x 0.5 cm. over lower part of neck along with incised wound in the size of 2 x 0.5 cm. on the backside of the

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lower portion of the neck. In the internal examination, right 5th & 6th ribs were also found fractured. There was contusion in right lungs. It was pale in colour. Liver was also ruptured. Abdominal cavity was filled with blood and heart was empty and pale. Spleen & Kidney were also pale.

3) After completion of usual investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Janjgir, from where the matter was committed to the Court of Sessions Judge, Bilaspur and was received on transfer by learned Additional Sessions Judge, Janjgir, who conducted the trial and convicted the appellant as aforementioned.

4) The conviction of the accused/appellant is based on the testimony of Kiri Bai (PW-11) and Rathram (PW-12).

5) Learned counsel for the accused/appellant argues that Kiri Bai & Rathram are not the reliable witnesses and in fact, they have not seen the occurrence. The testimony of these witnesses should be disbelieved. He also argues that there appears to be insanity in the matter of appellant and the Sessions Court erred in law by not granting him the benefit under Section 84 of the Indian Penal Code.

6) On the other hand, learned counsel for the State opposes the arguments advanced by learned counsel for the appellant and supports the judgment of trial Court.

7) So far as evidence of Kiri Bai (PW-11) is concerned, she has deposed that she happens to be the neighbour of the deceased. On the fateful day when the deceased was passing through the *gali* the appellant came over there and called her. Thereafter the appellant reached near the deceased. At that

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —4—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

time he was having a tangia. Some conversation took place between them and thereafter he attacked the deceased with tangia and gave repeated blows on her neck. Though this witness has been cross-examined by the defence at length, but nothing important has been brought in her cross-examination so as to assail her testimony on the point of her evidence that she had witnessed the incident that the appellant has assaulted the deceased.

8) Rathram (PW-12), son of the deceased, has deposed vide para 2 of his evidence that on the fateful day, the appellant called his mother. At that time, he was armed with a tangia. When his mother was stopped in *gali*, appellant reached there and attacked her with tangia. He has specifically deposed that after the first assault, he gave repeated assaults on the neck of his mother (deceased), on which blood started oozing out from the injuries and she fell down on the spot. This witness has also been cross-examined by the defence, but the defence has not been able to bring any such material on record, which may assail and discredit the testimony of this witness also.

9) The evidence of these witnesses is corroborated by the testimony of Dr. H.S. Chandel (PW-15), who conducted postmortem on the body of the deceased and found as many as 9 external injuries along with fractures of various bones as are indicated supra. The evidence of these two witnesses is also corroborated by the contents of the First Information Report (Ex.P/1). Therefore, on the basis of above evidence of these witnesses, which are duly corroborated by the medical evidence, it cannot be said that the version of these witnesses are unreliable and the trial Court erred in law in depending upon the testimony of these witnesses.

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10) So far as argument advanced by learned counsel for the appellant with regard to insanity of the appellant is concerned, Section 84 of the I.P.C. exonerate a person from liability for doing an act on the ground of unsoundness of mind if he, at the time of doing the act, is either incapable of knowing (a) the nature of the act, or (b) that he is doing what is either wrong or contrary to law. The accused is protected not only when, on account of insanity, he was incapable of knowing the nature of the act, but also when he did not know either that the act was wrong or that it was contrary to law, although he might know the nature of the act itself. He is, however, not protected if he knew that what he was doing was wrong, even if he did not know that it was contrary to law, and also if he knew that what he was doing was contrary to law even though he did not know that it was wrong. The onus of proving unsoundness of mind is on the accused.

11) As per the provisions of Section 105 of the Indian Evidence Act, 1872 the burden of proof rests on an accused to prove his insanity, and is not so onerous as that upon the prosecution to prove that the accused committed the act with which he is charged. The burden on the accused is no higher than that resting upon a plaintiff or a defendant in a civil proceeding as has been held by the Apex Court in the matter of **Dahyabhai v. State of Gujarat** reported in **AIR 1964 SC 1563**. In such a case, the primary burden is on the prosecution to establish that the accused has committed the murder and or of ingredients of murder are satisfied, then burden shifts on the accused to prove that on account of insanity, unsoundness of the mind, the act of the accused falls under Section 84 of the I.P.C. Because on account of the unsoundness of the mind,

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he was at the time doing the act incapable of knowing the nature of the act that he is doing what is either wrong or contrary to law, then he is protected.

12) In the present case, it does not appear that the insanity so argued by learned counsel for the appellant was ever brought to the notice of the Investigating Officer. In fact, neither during the course of investigation nor during the course of trial, such plea was taken which may show that the appellant was suffering from unsoundness of mind and on account of which he may seek benefit under Section 84 of the I.P.C. If we examine the evidence of Investigating Officer A.L. Koshley (PW-18), it would appear that only as a last suggestion, an attempt was made by the defence by putting a suggestion that at the time of arrest the accused was suffering from unsoundness of mind, but such a suggestion was completely denied by the Investigating Officer.

13) At the fag end of the trial, the defence had tried to bring this fact on record by adducing the evidence of wife of the accused as DW-1 namely, Neera Bai, who has stated in one line that her husband was not keeping good mental condition and she was taking him for *jhad phook* to Shivrinarayan. In cross-examination, she has admitted that the accused was not shown to any Doctor and he was not treated in any hospital. Further in para 4 of her cross-examination she has also admitted that even in said condition, as she earlier stated, the accused never used to beat her or the villagers. He only used to sit idle in mum condition and used to talk on his own. This was the consequence of the so called insanity of the accused. In para 5 of her cross-examination, she has categorically stated that the fact pertaining to taking the accused for *jhad phook* to Shivrinarayan is a wrong fact, which she has wrongly deposed before the Court. She has also admitted that the accused was not shown to

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anybody for his treatment in this regard. On this evidence only, it cannot be said that the benefit of exception provided by the Indian Penal Code under Section 84 was available to the accused.

14) In the present case, the prosecution has discharged its primary burden that the accused has committed the crime in question, but the accused has not discharged his burden of proving an exception under Section 84 of the I.P.C. regarding plea of unsoundness of his mind. It is further important to mention that even during the course of trial, the defence has not made any application before the trial Court for getting the accused medically examined in order to ascertain as to whether he was suffering from unsoundness of mind at the time of commission of offence. Except the evidence of DW-1 Neera Bai, wife of the accused, no other material has been brought on record to say that the accused was suffering from unsoundness of mind.

15) In the opinion this Court, the second argument with regard to unsoundness of the mind of accused advanced by learned counsel for the accused/appellant cannot be sustained in the facts and circumstances of the case.

16) In the result, we find no force in the arguments advanced by learned counsel for the accused/appellant, the judgment of conviction and order of sentence passed by learned trial Court is based upon sound reasonings and there appears to be no illegality or infirmity. The appeal being devoid of merit deserves to be dismissed and is accordingly dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
Sunil Kumar Sinha
Judge

Gowri